IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8099 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

TRIPURASHANKER S DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8099 of 1995

MR PV HATHI for Petitioner No. 1

MR MA BUKHARI, AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3-4

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/06/2002

ORAL JUDGEMENT

1. In this petition the petitioner has made a grievance that the respondents have wrongfully withheld an amount of Rs.42,140/- which was paid to him by way of

salary for the period between 1st June, 1994 and 25th November, 1994. He has made a further grievance that the respondents have deducted this amount from the gratuity and amount of pension payable to him after his retirement.

1.1. According to the petitioner, he joined as Primary Teacher in the service of the then Local Board Government on 21st August, 1958 and later on he served under the District Panchayat, Junagadh as functions of the Local Board were transferred to the Panchayat. He has averred that he was born at Anjar in Kutch district on 21st November, 1938. However, in his service book his date of birth was shown as 1st March, 1936. After completing 33 years of service he retired on 30th November, 1994. He has further averred that the respondents sought to recover an amount of Rs.42,140/- from him on the ground that he had unauthorisedly served between the period 1st June, 1994 and 30th November,1994. It appears from the record that the petitioner with a view to dispute the date of birth indicated in his service book, had approached the Civil Court by filing Regular Civil Suit No. 352/1994 in the Court of the learned 2nd Joint Civil Judge [Senior Division] at Junagadh. In the said suit he also filed application for obtaining interim injunction restraining the school authorities from relieving him from the service on 31st May, 1994. On that application the learned Civil Judge passed order directing defendants of that suit to maintain status-quo till filing of the written statement. Subsequently upon hearing both the parties, the learned Judge rejected the application of the petitioner for interim injunction.

1.2. Having been aggrieved by the said order, which is dated 19th July, 1994, the petitioner preferred Civil Misc. Appeal No. 194/1994 in the Court of the learned Extra Assistant Judge at Junagadh. The said appeal came to be decided and dismissed vide order dated 23rd November, 1994 by the learned Extra Assistant Judge, Junagadh. It appears from the record of the petition that no revision application was filed before this Court by the petitioner challenging the order passed by the learned Extra Assistant Judge, Junagadh.

1.3. It also appears from the record that the petitioner was relieved from service upon vacation of the injunction order with effect from 25th November, 1994. Respondent No. 2 withheld the entire retiral benefit amount of the petitioner on the ground that the petitioner had illegally and unauthorisedly remained in service of the concerned school during period between 1st

June, 1994 and 25th November, 1994 and the amount of salary paid during that time was required to be recovered from the petitioner. He therefore directed the petitioner to first deposit Rs. 42,140/- and he further directed the concerned department that unless the said amount is deposited by the petitioner, his retiral benefits should not be released.

2. Having been aggrieved by the said decision, the petitioner has now approached this Court by way of this petition. During pendency of this petition, this Court [Coram : C.K. Thakkar, J. as he then was] vide order dated 18th January, 1996 directed the respondents to release the amount payable to the petitioner after deducting a sum of Rs.42,140/-, with a further direction that nonpayment of Rs. 42,140/- would be subject to the final outcome of the present petition.

3. Mr. P.V. Hathi, learned counsel appearing for the petitioner has mainly contended that the respondents cannot withhold amount of Rs.42,140/- which was paid to him by way of salary for the period between 1st June, 1994 and 25th November, 1994, because he had discharged his duties during that period under the protection of the Court's order. He has further submitted that by paying salary to the petitioner, no monetary loss has been caused to the Government in as much as had the petitioner been retired in the month of May 1994, the school management would have been required to engage someone else in place of the petitioner and salary would have been paid to the new appointee; instead the petitioner himself has served for that period for which he has received the salary from the Government. He has further contended that even assuming that the Government is entitled to recover this amount from the petitioner, it has no authority to deduct the same from the amount to be received by the petitioner by way of retiral benefits.

3.1. As against that, Mr. Bukhari, Ld. A.G.P. appearing for the respondents has contended that the petitioner having given to understand that the outstanding amount may be recovered from the gratuity payable to him. He now cannot turn round and approach this Court by way of this petition. He has further submitted that if the Government is not permitted to deduct this amount from the retiral benefits of the petitioner, it would be very difficult for the Government to recover the said amount from the petitioner and ultimately it will lead to multiplicity of the proceedings.

4. So far the contention raised by Mr. P.V. Hathi to the effect that the Government has no authority to deduct the amount of Rs. 42,140/- from the retiral benefits of the petitioner is concerned, he has relied on a decision rendered by the Apex Court in the case of Gorakhpur University v. Shitla Prasad Nagendra reported in 2001 AIR SCW 2819. The Apex Court, after considering several decisions on this issue, has laid down as follows:-

> "Pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same is not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards Provident Fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee."

In light of the aforesaid ratio laid down by the Apex Court, it clearly appears that the pension and gratuity and the provident fund are rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In view of this clear position, even if it is assumed that a sum of Rs.42,140/- is payable by the petitioner to the respondents, the respondents have no authority to touch the retiral benefits and deduct the same from either pension, gratuity or provident fund amount. The respondents may follow any other remedy permissible under law. They, however, cannot seek any adjustment of the alleged outstanding amount from the retiral benefits of the petitioner.

At this juncture, I may turn to the contention raised by Mr. Bukhari to the effect that petitioner has given the undertaking to the Government to deduct this amount from his retiral benefits. However, on going through the record I do not find any such undertaking having been given by the petitioner. In absence of such material it is difficult to believe that the petitioner has ever given such undertaking to the Government. In view thereof this contention is required to be turned down.

5. Since the aforesaid first contention raised by Mr. Hathi deserves to be accepted, I do not propose to go into other contentions raised by the learned counsels for both the sides.

6. In view of the aforesaid observations, this petition is required to be allowed. The petition is, therefore allowed. However, considering the peculiar facts and circumstances of this case, the respondents are not required to pay any interest on the delayed payment of Rs.42,140/- and also the costs of this petition. Rule made absolute in the aforesaid terms.

[Akshay H. Mehta, J.]

* Pansala.